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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 178

DATE: Wednesday, January 24th, 1990

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, January 24th,
1990, commencing at 9:00 a.m.

VOLUME 178

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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I N D E X O F P R O C E E D I N G S

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1 ---Upon commencing at 9:00 a.m.

2 THE CHAIRMAN: Thank you. Be seated,
3 please. Obviously when we call for heat they listen to
4 us, eventually.

5 Okay, ladies and gentlemen, we are ready
6 I suppose for the AOC matter.

7 MS. MURPHY: We have a couple of final
8 questions dealing with the clearcut exercise to ensure
9 that we have dealt with some of the issues that were
10 outstanding from other parties, Mr. Chairman, and a
11 couple of others that have been raised.

12 ALBERT BISSCHOP,
13 FRANK KENNEDY,
14 JOHN McNICOL,
15 RICHARD GREENWOOD,
16 KENNETH ABRAHAM, Resumed

17 CONTINUED DIRECT EXAMINATION BY MS. MURPHY:

18 Q. Mr. Kennedy, first of all, would you
19 please comment on the degree to which this exercise
20 that you were engaged in has usefulness or practicality
21 on an on-going basis at the operational level?

22 MR. KENNEDY: A. Yes. I would have to
23 say at the operational level that I would consider that
24 this exercise does not have a very practical value. I
25 would suggest that our current cut-over records present
sufficient amount of information for management
purposes; that is to say, that the use of cut-over

1 aerial photography that is taken annually and our
2 cut-over maps which are prepared annually, combined
3 with local knowledge of the individuals involved on the
4 management unit and their experience, allow them to use
5 that information for that management purpose.

6 I would also comment that this exercise
7 was quite costly. I would estimate that there is about
8 90 person days' worth of effort in the preparation of
9 the maps at the district level and, in making that
10 comment, I would have to remind you that the exercise
11 has only looked at a very small portion of the cut-over
12 in 1987/8.

13 If you recall the areas shown on Map 1,
14 the area that had been shaded as the largest block, was
15 the very small portion of the total areas cut. As
16 well, I would suggest that the cost of an exercise such
17 as this to be incurred on an ongoing basis would not
18 warrant the information that would be produced;
19 however, having said that, I do think it was a
20 worthwhile investment to conduct the exercise at this
21 one point in time, and I think it does serve as a very
22 useful communication tool and subject to discussion
23 between individuals.

24 Q. Thank you. Mr. McNicol, the OFIA
25 asked a question and I would ask you to comment on

1 this. They asked you to explain the rationale for
2 increasing forest diversity in an area of, and what I
3 understand it would be, previously relatively
4 homogeneous vegetation.

5 Would you comment on that question,
6 please?

7 MR. McNICOL: A. As I indicated
8 yesterday, implicit in the Moose Habitat Management
9 Guidelines there is flexibility. That flexibility is a
10 reflection of the difficult capabilities of different
11 areas to produce moose.

12 In those areas that have high capability,
13 what we are looking to do is try to keep cut sizes down
14 to the 80 to 130-hectare level, lower capability those
15 parameters can be exceeded.

16 A wildlifer is looking to create
17 diversity for a number of wildlife species. In the low
18 capability areas that diversity cannot be created over
19 large areas because it does not have the inherent
20 ability, and if we looked at a jack pine sand flat as
21 an example, you cannot create large areas of mixed
22 wood, for instance, on that landbase, it doesn't have
23 the capability to do that.

24 What you can create is diversity in
25 age-class, and if you can create diversity in age-class

1 then you can help those sites that have limited
2 capability to produce those species in a shorter period
3 of time that can maximize that potential, as limited as
4 it is, by providing at least age-class diversity.

5 So whereas you may allow the cut sizes to
6 become larger, you will create some age-class diversity
7 by breaking some of these larger cuts into smaller
8 cuts. They are not going to be 80 to 130, they will be
9 larger, but you will be maintaining age-class diversity
10 by breaking those cuts.

11 Q. Thank you. Mr. Kennedy, in looking
12 at the series of maps that were produced in each of
13 these exercises I think the you have explained that for
14 the Map 3, the area of contiguous harvest, the
15 information does not provide the overall size of the
16 area, it doesn't provide information about the various
17 cover categories in that contiguous area, and it
18 doesn't provide information about the area of those
19 cover categories.

20 Can you explain the reasoning behind
21 that, please?

22 MR. KENNEDY: A. Yes. I should point
23 out that that was recognized by the technical working
24 committee at the outset of the exercise and one of the
25 key things that they noted in the difficulty of

1 tackling that question was one of time frame.

2 We have described this exercise as one
3 point in time, a snapshot of information. One of the
4 things the committee was grappling with was if they
5 were to present information on the areas in the
6 contiguous cut shown on Map 3, it would be the
7 difficulty of deciding between: Do you try and
8 represent the areas as they were after harvesting, some
9 of those areas after 10 years of age, or do you try and
10 represent them as they are today, some of them being 10
11 years older, and it was recognized that to do the
12 second part, to represent them as they are today, would
13 require a whole new set of photography being taken.

14 It was viewed that that wasn't a very
15 practical thing to do, to require districts to complete
16 new photography for each of these nine management units
17 and then go about the area photointerpretation and
18 putting the categories together.

19 It was recognized, however, that if you
20 were looking at the information as it was at the time
21 of harvest that it would be reasonable to view the
22 areas depicted on Map 2 and make the assumption that
23 areas would have been similar throughout the area of
24 the contiguous harvest; that is, making a number of
25 assumptions however; that being that there is no major

1 changes in topography within that particular area and
2 consequently no major changes in species composition
3 and forest conditions.

4 It also makes the assumption that the
5 area depicted on Map 2 is typical of the operations
6 that exist in that area. In the case of English River,
7 that would not be reasonable area to be depicted
8 backwards over the 10 years since that area is a result
9 of a particular situation.

10 One of the ideas though that the
11 committee talked about to overcome that difficulty was
12 the possible use of photomosaics being prepared, and
13 although that wasn't formally part of the instructions
14 in the clearcut exercise, because the committee felt
15 that it wouldn't be fair to impose that kind of a
16 workload on district staff, it was talked about as one
17 of the ideas that could be used to provide further
18 information of the situation as it is today.

19 And that was what led to the development
20 of this aerial photomosaic for the Dog River/Matawin
21 and that does provide an indication of the kind of
22 conditions that are out there today.

23 Q. So are you suggesting then that what
24 I should do, for example, is look at Map 2 - and I am
25 pointing to the Dog River/Matawin - and then imagine

1 similar situations in each of the small areas that are
2 mapped on Map 3?

3 A. That would be fair, if you are
4 looking at getting an idea of the conditions that
5 existed at the time of harvest in each one of those
6 years that make up the contiguous map.

7 It would not be fair though to look at
8 Map 2 and view each of the subsequent 10 years in the
9 contiguous and view them as you see Map 2; that is to
10 say, that some of them have had 10 years' worth of time
11 to regrow and, consequently, some of those areas are
12 free to grow as shown on the aerial photography, on the
13 photomosaic, as well as the slides that we presented.

14 Q. So you are suggesting in effect that
15 I should do that and then keep the time perspective in
16 my mind at the same time?

17 A. That's correct. It's possible then
18 to in fact work the opposite direction, to look at some
19 of the areas that are 10 years of age, make note of the
20 changes that have occurred in the vegetation, some of
21 those areas being free to grow, look at that
22 information and project it back onto Map 2 and draw
23 some conclusions as to the predicted success of the
24 regeneration treatments proposed in that area.

25 Q. So that being the case then, if I

1 were to look at a Map 3 and suggest that what I saw
2 there demonstrated 50, 60, 70 square miles of clearcut
3 and suggested then that that was a cause for concern,
4 what would you comment?

5 A. I would start off by agreeing with
6 someone, that if they were suggesting that the clearcut
7 silvicultural system had been applied to an area that
8 was 50, 60 or 70 odd square miles or square kilometres
9 that, yes, that would be true, that the clearcut system
10 had been used within that area; however, within the
11 boundary of where the cut-over is, that there would be
12 several categories of land, and we have described those
13 in our legend associated with Map 2.

14 And within that area there would be areas
15 that were in the categories of open clearcut, low
16 residual, heavy/moderate residuals as well as numerous
17 areas that would have been left uncut both in hardwood
18 and conifer components, and there would be a mix of
19 other features such as we have described using the FRI
20 categories of muskeg, open muskeg, and brush and alder.

21 So I would draw their attention and I
22 would use the aerial photography and the mapping
23 information we have to draw their attention to the fact
24 that there are numerous categories of degrees of
25 harvest and degrees of revegetation within an area such

1 as that, and draw their attention to the fact that we
2 are talking, in this case, cut-overs that occurred up
3 to 10 years ago.

4 Q. I have one last question for you, Mr.
5 Kennedy. The Ministry of the Environment posed this
6 question: How should someone outside the planning team
7 view and determine the size of the clearcut?

8 And the Ontario Forest Industry
9 Association asked this question, has asked for comment
10 on the relationship between perspectives on clearcuts
11 and tradeoffs made in resource decisions.

12 And I understand that you wanted to
13 comment on those questions and, in doing that, you
14 would ask us to look at the Exhibit 1013 which is the
15 colour photocopy of a note from Seasons Magazine?

16 A. Yes, that's correct. If I could ask
17 the Board to turn to Exhibit 1013 and also recall the
18 two statements that Ms. Murphy has mentioned, which I
19 believe are the comments raised during the statements
20 of issues for this panel.

21 I look at all three of those pieces of
22 information as being related and I see that there is a
23 concern being expressed by individuals. I see that
24 concern arising from, what I would say, recognizing
25 that there is more than one functional definition of

1 what constitutes a clearcut.

2 I would say it particularly came home to
3 us during the time that we were preparing the evidence
4 for this panel, which was in December of '89 when we
5 did receive a copy of the Seasons Magazine, and
6 observed that ad or photo on the back page of the
7 magazine. It made it quite obvious to us that we
8 needed to explain in this panel, as clearly as we
9 could, that the foresters and biologists are not
10 necessarily thinking about the same items, even though
11 they may be looking at the same area harvested under
12 the clearcut silvicultural system.

13 So I do think there is a theme between
14 the two questions or issues raised in the statement of
15 issues and indeed this article or the back of Seasons
16 Magazine, and that is one of definition.

17 From the work of the committee and from
18 the subsequent work that we have done in our panel in
19 preparation for this evidence, it's quite clear to us
20 that there is no single definition that serves all
21 purposes for defining clearcuts, that it's important to
22 recognize that each definition would depend upon the
23 user's point of view but, more importantly, what the
24 purpose of using that information would be.

25 When I look at Exhibit 1013, I get

1 somewhat concerned that I find that it's -- I believe
2 that it's difficult to take something as complicated as
3 the clearcut exercise and the kind of attributes that
4 go into mapping clearcuts and the understanding of the
5 clearcuts and try and reduce it to something that is
6 quite simple and can often lead, I would suggest, to
7 misleading information.

8 What is important in the understanding of
9 the definitions though is that the foresters and the
10 biologists have an understanding of what each other's
11 purpose is and what their needs are in terms of
12 information and how they need to portray that
13 information in the management sense.

14 One I would characterize is that when we
15 are looking at comments that arise from people that are
16 outside of the planning team, it's important that those
17 people have an opportunity to understand the concepts
18 that we have described here in this panel and I think
19 that there is a challenge there for us; and, that is,
20 to ensure that those people that are truly interested
21 in understanding and truly interested in participating
22 in resource management have adequate opportunities to
23 learn about those factors that have been described by
24 this panel.

25 I also think that it's important for

1 those individuals involved to determine how those
2 factors, those that are described by this panel, as
3 well as factors that they themselves may identify as
4 being important, affect the purpose to which they would
5 like to put that information to.

6 I would also say that when I look at
7 Exhibit 1013 that I think it's quite logical and quite
8 possible that foresters, when looking at the same areas
9 as biologists, would be thinking and interpreting an
10 area differently; and, that is, according to their own
11 needs.

12 So, broadly speaking, I think it's
13 reasonable that a forester would be describing the
14 results of applying the clearcut silvicultural system
15 over a larger period of time, looking at the entire
16 area which would be cutover; by the same token, it's
17 reasonable that a biologist would be looking at the
18 areas that are in the open clearcut category and would
19 be looking at an area that would be right after
20 harvesting.

21 I think that what is important then,
22 almost in a conclusion sense, is that it's important I
23 think for people to recognize that those that are
24 involved in the planning of the operations have an
25 understanding of what each other's purpose is, what

1 each other's needs are for information, and the fact
2 that those individuals have formed those opinions on
3 the basis of their scientific knowledge and training,
4 combined with their education. Combined with that
5 education is the experience that they had working in
6 their fields and the local knowledge, and it is very
7 easy for those individuals to work together as a team,
8 as part of the planning team to ensure that resources
9 are managed properly.

10 MS. MURPHY: Thank you. Unless you have
11 any questions at this stage, I would suggest we do the
12 other part of the panel.

13 THE CHAIRMAN: Very well.

14 Mr. Freidin?

15 MR. FREIDIN: Mr. Chairman, I think the
16 only documentation that you will need for the purposes
17 of this examination-in-chief are Exhibits 1028 and
18 1029.

19 There may be passing reference to the
20 Environmental Assessment Document, but I assume you all
21 have that with you.

22 So 1028 was the supplementary
23 documentation in areas of concern, 1029 was the
24 supplementary documentation for primary and secondary
25 road corridors. It looks like that, Mr. Chairman.

1 (indicating)

2 DIRECT EXAMINATION BY MR. FREIDIN:

3 Q. Now, Mr. Bisschop, could you please
4 explain why these two exhibits were prepared and
5 briefly describe what they are?

6 MR. BISSCHOP: A. Mr. Chairman, you will
7 recall in the evidence of Panel 15 when we were dealing
8 with the area of concern planning requirements, the
9 concerns that were expressed about the documentation of
10 decision-making and prescriptions in areas of concern,
11 and you will recall that after some consideration of
12 the matter the Ministry came to the decision that we
13 would attempt to correct the problem by producing what
14 we considered to be our expectations of documentation
15 requirements for that process and that we would deliver
16 further evidence on that material at a later time
17 during the hearing.

18 We completed that, the preparation of
19 that documentation requirement material in December and
20 issued it to various parties and are here explaining it
21 today.

22 The way we approached the problem was to,
23 in effect, produce standardized approved documentation
24 forms, if you will, and accompanying those forms was a
25 set of instructions for the completion of those forms.

1 And, in doing that, we attempted to be quite
2 comprehensive in the instructions to outline what we
3 expected to see as documentation to meet the
4 requirements of the planning for areas of concern; and,
5 secondly, for road corridor planning.

6 What I would like to do is not get into
7 the details but speak generally about the documentation
8 forming Exhibit 1028 just to draw your attention to the
9 structure and organization of it and highlight a couple
10 of items in it that are of particular importance, and I
11 think what you may wish to do is number the pages of
12 the form itself, because we didn't number them, but
13 there are five pages to the first form and I may be
14 flipping back and forth.

15 THE CHAIRMAN: So the cover page would be
16 page 1?

17 MR. BISSCHOP: Yes.

18 THE CHAIRMAN: Okay.

19 MR. BISSCHOP: And, again, I will be very
20 brief. The form is organized in four parts. The first
21 part, Part I, is basically -- it's entitled: Area of
22 Concern Prescription. It's descriptive material about
23 the particular area of concern we are dealing with
24 describing locational information and the information
25 about the values that are of concern in the area.

1 What I draw your attention to is on the
2 top of page 2, Item No. 3, and the idea of the
3 inclusion of Item No. 3 is that in very brief form the
4 expectation is that for the value we are trying to
5 address in that area of concern, the value or values,
6 whether there were multiple values, a very brief
7 description of what are the effects of timber
8 management operations that one is concerned about.

9 For example, if the value is a fisheries
10 concern, we would expect to see what I guess I would
11 call key word explanation of effects, for example,
12 sedimentation, erosion, et cetera.

13 If the value was a tourism concern, we
14 might expect to see something in there that deals with
15 anything from aesthetics to noise. The idea is to
16 document at that point in the form the effects that are
17 of concern, because the prescriptions then will be
18 addressing those effects.

19 Part II of the form deals with
20 prescription setting for harvest, renewal and tending
21 operations. I expect that much of that is familiar to
22 you. In terms of the process, I described about how
23 one would make a decision; that is, as to reserve, as
24 to modified operations, or normal operations. What I
25 would like to draw your attention to in Part II is, for

1 example, in Item No. 1, if we make a decision to
2 prescribe normal operations there is a requirement to
3 rationalize that decision in Item 1(b).

4 Similarly on the next page, if we are
5 making a reserve prescription, Item 3, there is a
6 requirement to produce a rationale for that decision.

7 On the subject of modified operations,
8 returning again to page 2, the requirements of Appendix
9 II -- Appendix I, I am sorry, of the Class EA with
10 respect to looking at alternatives and analysing
11 alternatives are set out there.

12 The form is also organized so that a
13 certain amount of material has to be produced prior to
14 going to the information centre. So on page 3, Item
15 No. 4, would document the proposed prescription that
16 would be brought forward to the information centre for
17 public review.

18 Item No. 5 then provides space for
19 documenting any public comments on the proposed
20 prescription, and Item No. 6 documents the final
21 decision.

22 MR. FREIDIN: Q. So, in effect, when you
23 went to the information centre you would have completed
24 the required portion or the relevant portions of Part
25 II, all of Part II up to and including Item No. 4?

1 A. That's correct.

2 Mr. Chairman, you will also recall that
3 in areas of concern if there are road crossings of
4 areas of concern, primary and secondary road crossings,
5 there are planning requirements as outlined in Appendix
6 II of the Class EA. I don't think I need to get into
7 details here, but if you turn on to page 4, Item No. 3,
8 basically represents the requirements of Appendix II
9 where alternative locations must be considered and
10 analysed.

11 And, again, through Items 4, 5 and 6 we
12 outline the requirements prior to the information
13 centre and then, finally, the requirements of
14 documenting decisions.

15 On page 5, continuing on roads, there is
16 a requirement to document conditions if any related to
17 tertiary roads. And finally, Part IV deals with the
18 subject of compliance monitoring, where there is a
19 requirement to outline the specifics of the area
20 inspection procedure as it relates to each area of
21 concern.

22 Turning then back to page 1 of the form,
23 in the top right corner we have also included what we
24 have referred to as a prescription summary box, and the
25 idea here is to fill in the appropriate boxes in that

1 summary so that one in reviewing the documentation can
2 glean a very quick understanding of what are the
3 decisions that ultimately apply to that area of concern
4 and would look in the remainder of the form for
5 documentation of how that decision was arrived at.

6 Q. Mr. Bisschop, does the entire form
7 have to be completed for every area of concern?

8 A. No. And on that answer I would like
9 to explain in two parts.

10 First of all, we have designed the form
11 to be completely comprehensive, however, only the
12 applicable part of the from need be filled out for any
13 particular area of concern. And I think the best way
14 to explain that, for example, is if you turn to page 3,
15 Item No. 3.

16 If we have a prescription for an area of
17 concern that is reserve, the only part of Part II of
18 the form that needs to be filled out is that step 3 in
19 which we describe our prescription and we describe the
20 rationale for that prescription.

21 There would be no requirement, if you
22 recall my previous evidence, to look at the whole
23 subject of alternative modified prescriptions because
24 they weren't under consideration. So items 1 and 2 of
25 Part II wouldn't have to be filled out. You would deal

1 with Items 3, 4, 5 and 6.

2 The second example. If there were no
3 roads crossing the area of concern, obviously Part II
4 of the form wouldn't need to be filled out. So for any
5 area of concern only the applicable parts of the form
6 would need to be completed.

7 Now, a second part of my answer of no on
8 the requirement for a completed form for each and every
9 area of concern is that we also have provisions for the
10 form to be completed once for a number of areas of
11 concern that have a common value and, therefore, a
12 common prescription.

13 This provision, Mr. Chairman, has also
14 been included in the area of concern planning process
15 and I can draw your attention to the Class EA Document
16 at pages 146 and 147 to define that provision.

17 I think we made it clear through this
18 form of how that provision could apply and what the
19 documentation expectation is and, in simple terms, if I
20 could use an example related, for example, to bald
21 eagles. If we have a number of occurrences of bald
22 eagle nests in a management unit, we could produce a
23 common prescription for that common value. The form
24 would be filled out once and each of the nest locations
25 of bald eagle nests would be identified in a list that

1 accompanies the documentation form.

2 Mr. Chairman, further to the description
3 that is already contained in the Class EA on the
4 subject of common prescriptions, I would draw your
5 attention to the bottom of page 1 of the instructions
6 that accompany the form. The first two sentences of
7 the last paragraph, and I'll quickly read them:

8 "In the determination of prescriptions
9 for harvest, renewal and/or tending
10 operations and/or conditions on tertiary
11 roads the form can be used for individual
12 areas of concern or a group of any number
13 of areas of concern which have a common
14 value or values which requires
15 protection. In the latter case, only one
16 form needs to be completed."

17 Obviously, Mr. Chairman, the intent here
18 is to address this question of duplication in
19 documentation, and if one form can be produced to serve
20 the needs of several areas of concern, it's obviously
21 the way to deal with that.

22 THE CHAIRMAN: Mr. Bisschop, is this
23 supplementary documentation meant to appear in the
24 Timber Management Planning Manual at some point. Where
25 would this documentation go?

1 MR. FREIDIN: Are you talking about the
2 instructions?

3 THE CHAIRMAN: Well, the instructions and
4 an example of the form. Is that intended to be part of
5 the manual, in your view?

6 MR. BISSCHOP: I am not sure that we have
7 considered it that far yet, Mr. Chairman. I think in a
8 sense we have treated the approach to documentation in
9 much the same way that the tables in the TMPM have been
10 dealt with already, where there is a table and set of
11 instructions for its completion. This is, in effect, a
12 very similar requirement.

13 To be fair, I think our latest thinking
14 on supplementary documentation is that perhaps it ought
15 to be considered as part of the plan, rather than
16 something extra and, in that sense, the requirements.

17 THE CHAIRMAN: Isn't the point of all of
18 this to indicate to those in the field how certain
19 planning procedures should be carried out and how those
20 planning procedures should be documented.

21 So, from that perspective, if the purpose
22 of the Timber Management Planning Manual is to provide
23 direction, would it not make sense that how those in
24 the field are to handle AOC prescriptions in terms of
25 documenting them should also be contained in the

1 manual?

2 MR. BISSCHOP: I think -- I was going to
3 conclude by saying that I think that that is
4 reasonable, Mr. Chairman.

5 MR. FREIDIN: Q. Mr. Bisschop, is there
6 any relationship between this material, this is the
7 material in Exhibit 1028 and Exhibit 1029, in terms of
8 its substance? Is there any relationship between that
9 material and the area of concern planning process as
10 explained in the Environmental Assessment Document and
11 in the evidence of Panel 15?

12 MR. BISSCHOP: A. Mr. Chairman, I would
13 like to make it very clear that there is absolutely no
14 difference in terms of the requirements, as further
15 elaborated upon in this material, from what has already
16 been explained in the Class EA in previous evidence.
17 In effect, we have produced this documentation
18 requirement to provide clear direction

19 I guess we would consider it as not a
20 reflection on the adequacy of the decision-making that
21 is being made, that is being done using the process
22 requirements outlined in the Class EA, but rather a
23 reflection on the documentation. So we are trying to
24 standardize the documentation.

25 The processes outlined on pages 146 to

1 152 of the EA, Appendix I and Appendix II of the EA are
2 entirely reflected in this form and the instructions
3 that I have commented on.

4 Q. Mr. Bisschop, could you explain why,
5 in your view, using this standard form and applying the
6 instructions that you have prepared will improve the
7 documentation of area of concern planning process?

8 A. Mr. Chairman, I would like to make a
9 couple of points about that. I think, first of all,
10 and everybody I think recognizes this now, for the
11 first time we have provided clear comprehensive
12 instructions in writing on the documentation
13 requirements for area of concern planning.

14 I think I acknowledged the concerns about
15 the lack of that in our previous evidence in Panel 15.
16 The form, and particularly the instructions that
17 accompany the form, are of course useful for training
18 purposes and provide the basis for a consistent
19 approach to training and then a consistent completion
20 of the documentation.

21 Also the package is something that staff
22 at the district level can take away with them for use
23 and reference in planning, and I would expect that over
24 time the set of instructions will be engrained in
25 peoples' minds and will, in effect, not even have to be

1 used because people will become so familiar with the
2 form in terms of what is expected.

3 Secondly, I think the package will
4 improve documentation in terms of ensuring the clarity
5 and traceability of decision-making.

6 Q. Perhaps you can provide some examples
7 or explain why you believe that to be the case?

8 A. Yes. I have a few examples to make
9 that point, Mr. Chairman. If you will recall my
10 earlier evidence in Panel 15, I expressed some
11 concerns, for example, about how the subject of effects
12 was being dealt with in area of concern planning.

13 Again, briefly referring to the form, on
14 page 2 of the form you will recall my comments about
15 Part I, Item No. 3, where the requirement there is to
16 briefly describe the potential effects that are of
17 concern. In Part II, Item 2, we are assuming we look
18 at modifying operations to address those effects. One,
19 through the environmental analysis, should be able to
20 make the links directly between the description of
21 effects and Item 3 and the prescriptions that deal with
22 those effects.

23 The same would apply, for example, in
24 Part III when we are dealing with roads. The analysis
25 in Item No. 3 on page 4. The environmental analysis

1 would direct itself to the effects that were previously
2 described in Part I, No. 3.

3 On that subject of environmental
4 analysis, on page 6 of the instructions, the
5 description of Item No. 2 Roman numeral (ii) near the
6 bottom of the page describes briefly what is required
7 there. And that description of the environmental
8 analysis, you will recall, is explained in further
9 detail in Appendix I of the Class EA.

10 Another simple example I think I could
11 point to in terms of the form ensuring clarity and
12 traceability of decision-making is on page 1 of the
13 form, that summary box at the very front of the page.
14 Again, when I described that, I indicated that the
15 purpose there was to, in effect, fill up the final
16 decision that was made to the prescription and one
17 would -- by checking off the boxes, a reader would look
18 through the remainder of the form to see how, for
19 example, the decision was made on modified operations,
20 if that was checked off in the box.

21 THE CHAIRMAN: Where in the manual or
22 this documentation would you have an explanation of the
23 common code? I take it these are numbers that MNR
24 would use internally to describe certain types of
25 prescriptions?

1 MR. BISSCHOP: That's correct.

2 THE CHAIRMAN: Some kind of system.

3 MR. BISSCHOP: The way I would see that
4 is, for any plan, the entire supplementary
5 documentation package for areas of concern would
6 include an index to those code descriptors at the
7 beginning of the package.

8 Now, one of the questions, of course,
9 that we have addressed is: What is the utility of all
10 of this documentation, is it just documentation for
11 documentation sake, or does it have real use? And we
12 think that it does in the sense that it outlines a
13 clear, traceable format for decision-making that is
14 available to any reviewers of the plan, the authors of
15 the plan who are going to be having to -- the authors
16 or future staff who have to implement the plan are
17 going to, over a five-year period sometimes, have to be
18 reflecting on why decisions were made, and these forms
19 would readily provide for that because of the
20 documentation of decision-making.

21 And, in particular, with the kind of
22 succession of staff that we have in the Ministry, the
23 completed forms form an information basis, if you will,
24 for the implementors of the plan to see how decisions
25 were made in planning.

1 MR. FREIDIN: Q. Can you advise what
2 your opinion is as to whether, following the
3 instructions and completing the form, will make the
4 decisions clear and traceable to the public?

5 A. Yes, I think that is a key part of
6 the organization of the form and my comments about the
7 traceability, that anyone who cares to review the plan,
8 whether it be public, government reviewers, internal
9 MNR staff, could readily see how decisions are made.

10 Q. Mr. Bisschop, during Panel 15 the
11 issue which gave rise to the preparation of some of
12 this documentation related to areas of concern.
13 Notwithstanding that, you have prepared Exhibit 1029
14 which deals not with areas of concern but rather deals
15 with the subject matter of primary and secondary road
16 corridors.

17 Could you briefly explain why that
18 particular subject matter has been made the subject
19 matter of a standard form and instructions for
20 completion of the form?

21 A. Mr. Chairman, you will recall in the
22 evidence of Panel 15 that we described planning
23 requirements related to road planning and that those
24 planning requirements involved consideration of
25 analysis of alternatives and rationalizing decisions.

1 We felt that the same concerns that
2 related to documentation and traceability of decisions
3 for areas of concern also applied to roads, and we felt
4 that at the same time as we are addressing the area of
5 concern problem we could also address the road planning
6 question, and we have produced a form that, in many
7 ways, is very similar to the area of concern form and
8 we have a set of instructions that outline the
9 expectations for completion of that form as well.

10 MR. FREIDIN: Those are my questions for
11 Mr. Bisschop, Mr. Chairman. That is the end of our
12 direct examination.

13 THE CHAIRMAN: Thank you, Mr. Freidin.
14 Mr. Cassidy, you are first up. Are you
15 ready to go?

16 MR. CASSIDY: Yes, Mr. Chairman. There
17 is only one exhibit which might be of assistance to the
18 Board and witnesses and that is the Timber Management
19 Planning Manual. I believe I have advised Mr. Kennedy
20 and also Ms. Devaul of that fact.

21 There is going to be some photographs
22 which I would like to have a look at that we discussed
23 yesterday, and we might as well start that process.
24 There is only about four.

25 CROSS-EXAMINATION BY MR. CASSIDY:

1 Q. So, if possible, we might have the
2 lights and just flip, to start, to photograph No. 12.

3 This is a question I guess that either
4 Mr. Kennedy or Mr. Greenwood can help me on, but as I
5 recall, I think it was you, Mr. Greenwood, yesterday
6 who described this as a budworm stand; that is, a
7 budworm infested stand?

8 MR. GREENWOOD: A. Yes, I described it
9 as a late successional stand that had been damaged by
10 budworm.

11 Q. Is this stand, to your knowledge,
12 greater than 8 hectares, Mr. Greenwood?

13 A. I couldn't answer that question.

14 Q. All right. But on the assumption
15 that it is, I think your evidence was - and I want to
16 make sure I am right on this - your evidence was
17 yesterday that it would be recorded as a clearcut or
18 marked, I think was your word, as a clearcut even
19 though it's not cut. Is that what you said yesterday?

20 A. Yes. I think that what I was saying
21 was that this stand would be considered depleted and
22 that it would or could be calculated into the total
23 area of clearcut.

24 Q. Okay. I want to turn you to -- when
25 you say 'considered depleted', I guess that means it's

1 marked or recorded somewhere as depleted in the whole
2 process?

3 A. In the process of accruals and
4 depletions with respect to MAD calculations this stand
5 would be considered depleted, depleted on the basis
6 that it would have been described as a spruce stand.

7 Q. Right. And would it be recorded
8 somewhere, for the purposes of getting to that accruals
9 and depletions, in the Timber Management Planning
10 Manual?

11 A. Yes, it would be.

12 Q. And am I correct that it would be
13 recorded on Table 6.1 of the Timber Management Planning
14 Manual, which I think is Exhibit 7?

15 MR. KENNEDY: A. Perhaps I can help you
16 there, Mr. Cassidy.

17 Q. I am sorry?

18 A. Perhaps I can help you out there.

19 Q. Fine, thank you. I believe it would
20 be page 145 of the Timber Management Planning Manual.

21 A. Yes. In the annual report that is
22 prepared in areas such as this one, what we are looking
23 at would be recorded under a natural depletion and
24 would be recorded under insect disease column, which is
25 in approximately the middle of the page.

1 Q. Right. So it would not fall within
2 the categories on the left, being the harvest
3 categories, but would fall in the natural depletion
4 categories; is that right, Mr. Kennedy?

5 A. That's correct.

6 Q. So although you could consider this
7 area to be depleted, for recording purposes you would
8 not consider it to be cut or harvested or clearcut?

9 A. Under the assumption that you have
10 indicated the area being over 8 hectares, which is one
11 of our mapping rules, yes, it would be recorded as a
12 natural depletion.

13 Q. Okay.

14 MR. GREENWOOD: A. I think the point of
15 what I was saying yesterday, Mr. Cassidy, is that the
16 forester has to make a decision as to what to map as a
17 cut-over or harvest area or not, and if the
18 silvicultural system used is the clearcut silvicultural
19 system, it was to be marked or recorded as cut-over, it
20 would be recorded as clearcut.

21 I also mentioned yesterday a number of
22 the factors that the forester would weigh; one of them
23 being size, another one being proximity to standing
24 timber, proximity within the cut. And when I was
25 referring to this slide, I was assuming certain things,

1 possibly oversimplifying.

2 If the forester made the decision that it
3 was not a clearcut, it could be recorded under one of
4 the other categories, as Mr. Kennedy suggested, under a
5 natural depletion as well. So dependent on those
6 factors and some of those things that I described
7 yesterday, I stopped when I said it could be recorded
8 in clearcut. If it didn't fit those, if the decision
9 was not to call it clearcut, it would go into one of
10 the other categories of depletion, in this case,
11 natural depletion.

12 Q. I understand that, Mr. Greenwood, the
13 difficulty I am having is when you described it as a
14 budworm stand and I can see the trees there and I'm
15 assuming that it's over 8 hectares, I find it difficult
16 from a layman's perspective that any forester would
17 consider a budworm stand that is going to be recorded
18 as natural depletion on Table 6.1 to be recorded
19 anywhere as a clearcut. Can you help me out on that?

20 A. I think you hit the key factor. It
21 would depend upon whether this was a complete stand,
22 whether this is part of a stand, whether it was 8
23 hectares. For instance, if this was part of a larger
24 stand that has been harvested and there was a patch of
25 this that distance from the standing timber, it would

1 most likely be perhaps included with the rest of the
2 stand and mapped as a clearcut.

3 If this was the total stand which had
4 been not harvested, it would be recorded as natural
5 depletion.

6 Q. Can we flip to photo 24 then. This
7 is another picture of Mr. McNicol hiding in some bushes
8 there that seem to be pretty dense and, in fact, it
9 looked like standing timber to me. And as I recall
10 your evidence yesterday, this could also be marked as a
11 clearcut?

12 A. That's correct.

13 Q. And your same comments which you just
14 indicated with respect to photo 12 would apply to this
15 as well?

16 A. That's correct. Although, in this
17 case, if it was not to be classified as clearcut it
18 would not be natural depletion, it would have to go
19 into one of the other categories.

20 Q. Right. But as I see it, just looking
21 at one of these two photographs, it occurs to me - and
22 maybe this gets back to Mr. Kennedy's point earlier
23 about the difference between perspectives - but it
24 occurs to me that a forester may in fact consider a lot
25 of standing timber to be clearcut for various purposes.

1 A. He might, exactly. He may -- from
2 the perspective of the forester, he may be viewing it
3 as, I would choose the word depleted, and then choose
4 to record that as clearcut. You brought out the point
5 they may also choose to deplete it through natural
6 category or something like that, but you view it as
7 depleted.

8 Q. So a suggestion by a forester that a
9 clearcut is maybe 2,000 or 4,000 hectares, am I correct
10 that that forester may be including an awful lot of
11 standing timber in that overall area?

12 A. He would be including standing
13 timber. How much, of course, would depend on the local
14 site.

15 Q. On the site, correct. But that is
16 possible, that in a particular site there could be a
17 lot of standing timber?

18 A. It certainly is and I think that was
19 one of the points Mr. Kennedy was attempting to make
20 this morning.

21 Q. That's right. Thank you.

22 Okay. I want to turn now to photograph 15
23 again, if I can enlist your assistance again, Mr.
24 Kennedy?

25 MR. MARTEL: Can I ask a question, Mr.

1 Cassidy?

2 MR. CASSIDY: I am sorry.

3 MR. MARTEL: Can I ask a question. I'm
4 wondering why MNR -- if you go back to the definitions
5 that Mr. Armson and I talked about on a number of
6 occasions, that some kind of devised logic to why one
7 would have wood standing there and it would show up to
8 a layperson as being depleted. You might want to call
9 it useless, but how would you call it depleted when
10 it's still standing there?

11 MR. KENNEDY: Well, Mr. Martel, you have
12 raised a very good point and what I would say is two
13 things. When we set out to look at recording
14 depletions that occur on the landbase, first of all, we
15 are looking at recording the total area that is out
16 there, so we try and record the total area. Now, we
17 also -- our second objective is to maintain the
18 integrity of the database that is used in the maximum
19 allowable depletion calculations.

20 Our third problem - and this is where we
21 start to, I think, cause some confusion in lay
22 interpretation - our third problem is one of mapping
23 and just shear areas that can be mapped on the
24 photograph and, in a practical sense, is it large
25 enough to draw the line around, and then the

1 recordkeeping that's associated with all those small
2 stands. So it becomes a practical point where we have
3 a cut-off. Currently our cut-off rule is 8 hectares.

4 And if you have stands that are three and
5 four hectares in size, it is technically possible to
6 draw lines around them using aerial photointerpretation
7 and producing new cut-over mapping, but it isn't a
8 practical thing to do.

9 The significance of those small stands is
10 such that those areas will change over time and they
11 will no longer be available as merchantable timber and
12 in the sense that you would return to them. So it's
13 not important to keep track of those individual stands
14 in those small areas.

15 Granted, a person could make an argument
16 that many of those small stands, added up, would make a
17 significance. That is something that is a concern and
18 there are mapping rules that allow you to consider that
19 by joining stands up with arrows, but it really comes
20 down to: What is a practical cut-off limit in the
21 mapping and the keeping of records for each one of
22 those stands.

23 Now, the recordkeeping part is, as you
24 will recall from the evidence given in Panel 3, I
25 believe, is: The amount of information kept on each

1 one of those stands is quite voluminous. It's a
2 computer record that covers an area of a hundred odd
3 fields of information, so it does become a problem.

4 MR. CASSIDY: Q. If I could get Mr.
5 Kennedy or someone to flip to photograph 15. All of
6 the photographs I am referring to, for the purposes of
7 the record, are those referenced in Exhibit 984 -- I am
8 sorry, 1008, being the witness statement for this
9 panel.

10 And I think it was described in the
11 witness statement at page 13 that this is an
12 undisturbed, or a photograph showing an undisturbed
13 riparian area, and I think you in fact made that note
14 as well. Is that correct, Mr. Abraham?

15 DR. ABRAHAM: A. Yes, that is what I
16 described it as yesterday. Keep in mind I didn't walk
17 out into the area.

18 Q. Right.

19 A. But from the perspective of this
20 photograph, that is the idea to keep in mind.

21 Q. Well, you did a site visit on this;
22 didn't you, Mr. Kennedy?

23 MR. KENNEDY: A. Yes, I was in the area.

24 Q. This is photograph 15?

25 A. Yes. I can't say that I walked

1 through the middle of that particular slide though,
2 although there are other slides that we did walk into.

3 Q. All right. Well, am I correct in
4 assuming, Mr. Kennedy, when you describe something as a
5 riparian area there is a certain degree of wetness
6 there?

7 A. Yes, you are.

8 Q. And the photograph note on page 13
9 indicates that the area was harvested in the 1987/8
10 season. And on the assumption that that is the case,
11 and I am advised it is, you would agree with me, Mr.
12 Kennedy; would you not, that in fact that riparian area
13 was left undisturbed in the harvesting operation prior
14 to the implementation or a promulgation, if you will,
15 of the Guidelines for Riparian Areas in February of
16 1989?

17 A. Yes, I would agree with you on that
18 comment and I would draw your attention to the fact
19 that our description on page -- and our description on
20 page 13 of that particular slide, we were attempting to
21 use the phrases in the foreground and in the background
22 to indicate exactly what portions have been harvested.

23 And, yes, the observations that we made
24 on the site of the area has remained undisturbed; that
25 is, the area that is in the centre portion of the

1 middle of the slide.

2 Q. I trust you can help me on this, Mr.
3 Kennedy. But would it be fair for me to assume that
4 there may very well be operational difficulties of
5 going into an area like that which might account for
6 one reason why it was left undisturbed?

7 A. That's correct, depending on the
8 season of operation there could be operational
9 difficulties operating on terrain such as that.

10 MR. CASSIDY: If I could just have a
11 minute, Mr. Chairman.

12 Q. And is it then fair to say that this
13 might be what one consider a happy marriage between
14 operational concerns and concerns of protection of that
15 riparian such that it would be left undisturbed?

16 A. I would say it's a particular
17 example, would be fair way of characterizing it and I
18 have observed that in other situations, yes.

19 Q. So you have observed that in other
20 situations?

21 A. Yes, quite common.

22 Q. Thank you. And if I can get you now
23 to flip to or turn to photograph 27, Mr. Kennedy, very
24 quickly. We have what I think Mr. Abraham described
25 earlier on the left-hand portion of that photograph

1 being another undisturbed riparian area; is that
2 correct, Mr. Abraham?

3 DR. ABRAHAM A. That's correct, that's
4 the way I described it.

5 Q. And, as I understand it, this area as
6 well was harvested prior to the Guidelines for Riparian
7 Areas, or the Code for Riparian Areas being instituted.
8 Are you aware if that is the case, Mr. Kennedy?

9 MR. KENNEDY: A. Yes, that is the case.

10 Q. And is this another example of what
11 we were just discussing?

12 A. Yes, it is.

13 Q. Thank you. Now, if I can get you to
14 jump up again, Mr. Kennedy, and turn to photo No. 19.

15 Now, I am not sure I can recall, I think
16 it was you, Mr. Greenwood, who indicated yesterday that
17 this is a cut-over pattern that followed the pattern of
18 what was a large natural stand?

19 MR. GREENWOOD: A. That's correct.

20 Q. To your knowledge, Mr. Greenwood, do
21 you know if that natural stand was a fire originated
22 stand?

23 A. I don't know. That would be my
24 belief.

25 Q. Anyone else have any site-specific

1 information on that?

2 (no response)

3 All right. And now, if I can ask you to
4 flip to photograph No. 20, Mr. Kennedy. That's it.

5 Now, Mr. Greenwood, it's my information
6 that this photo represents parts of three separate
7 years of harvesting activities from 1986 through 1989.
8 Are you in a position to confirm that?

9 MR. GREENWOOD: A. I know that it
10 includes at least two. I couldn't confirm whether it's
11 three or not.

12 Q. It's more than just one season's
13 activities, in your view; is that correct, on this
14 stand?

15 A. That's correct. Yes, it is.

16 Q. And do you agree, or is it true, Mr.
17 Greenwood, that the types of breakups in the cut
18 patterns displayed here were similar or essentially the
19 same from one year to the next?

20 A. That's correct.

21 MR. CASSIDY: Okay. I think that is it
22 for the photographs for me, Mr. Chairman. If we could
23 have the lights, and the cameras.

24 THE CHAIRMAN: Mr. Kennedy, would you
25 happen to know or, Mr. Greenwood, where on 1013 what

1 cut-over this is depicting?

2 MR. GREENWOOD: Yes, I do. It's an area
3 north of Blind River.

4 THE CHAIRMAN: And do you know the size
5 of that cut-over?

6 MR. GREENWOOD: I have some information
7 that would allow me to determine that, Mr. Chairman. I
8 would have to review it again. I could get...

9 THE CHAIRMAN: It's not that important as
10 to the precise size. Would this be considered a large
11 cut-over?

12 MR. GREENWOOD: The area that you are
13 examining, Mr. Chairman, is in fact a contiguous
14 cut-over, it was cut over a number of years. It is --
15 it already includes areas of free to grow, in fact, the
16 total foreground in the photograph has been regenerated
17 and is free to grow.

18 So to answer that question would, of
19 course, then depend on, again, what we have been
20 attempting to say, the point of view. So for the
21 forester, part of that area is already in an age-class
22 of 0 to 20 in an FRI stand description. It would
23 depend then on what was left after you removed that
24 area and put it back into inventory whether you called
25 it a large clearcut or not.

1 THE CHAIRMAN: I am not going to open
2 that one up again. Sorry, Mr. Cassidy.

3 MR. CASSIDY: That is fine. I want to
4 flip or turn to Exhibit 1011 which you filed yesterday,
5 or Ms. Murphy filed on your behalf. And does the Board
6 have that? It's the set of overheads I believe.

7 Do you have that, Mrs. Koven?

8 Q. I want to turn to page 5 of Exhibit
9 1011. And, Mr. Greenwood, you yesterday described the
10 various management factors which are listed there on
11 that page, and I am wondering if you would or could, in
12 your view, the nature and availability of the harvest
13 equipment to be utilized in the proposed area; could
14 that be one of the management factors?

15 MR. GREENWOOD: A. Yes. There would be
16 a number of other factors, Mr. Cassidy. In fact, at
17 one point in my evidence yesterday I mentioned that
18 there would be other factors. I mentioned season of
19 operation, balancing of high volume stands with low
20 volume stands. So there would be a number of local
21 factors as well that would be influencing that.

22 Q. So equipment, the type of harvest
23 equipment and the availability of harvest equipment
24 would be one of those other factors that determines the
25 cut pattern?

1 A. Yes, it would.

2 Q. And I then want you to turn to you,
3 Mr. Kennedy, and get into a discussion of the Dog
4 River/Matawin just very briefly.

5 I think you indicated yesterday in your
6 evidence-in-chief that that forest may in some way be
7 characterized as a transitional forest?

8 MR. KENNEDY: A. Yes, I did characterize
9 it in that fashion.

10 Q. And would you agree that, however,
11 that the stand composition and sites in this forest are
12 predominantly a reflection of the boreal forest?

13 A. Yes, I would agree and I attempted to
14 make that point when I indicating that the primary
15 species there are jack pine and black spruce.

16 Q. Mr. McNicol, I want to focus on some
17 of your evidence just briefly and ask you the
18 following. Are merchantability and marketability of
19 the species and sites in an area, are they relevant and
20 required factors for a wildlife biologist to consider
21 when he or she determines the prescriptions for
22 wildlife habitat for that area?

23 MR. McNICOL: A. I think, as I explained
24 yesterday, with regard to the categories of low
25 residual, moderate and heavy residual, which generally

1 is a reflection of marketability or merchantability,
2 yes, it's very important for biologists when they are
3 assessing a proposed cut to be cognizant of those
4 factors.

5 Q. Okay. And I take it if it's very
6 important you would agree that a biologist who fails to
7 take those factors into account is, in your view, not
8 doing his or her job properly?

9 A. It would surprise me if a biologist
10 was not doing that in a particular area. Certainly if
11 that were to occur it would be a problem with respect
12 to guideline application.

13 Q. They wouldn't be doing their job
14 properly; is that right?

15 A. They would not be taking all the
16 factors into account that are necessary for proper
17 guideline application.

18 Q. And that they should take into
19 account?

20 A. Correct.

21 THE CHAIRMAN: But that is with respect
22 to timber management guidelines as opposed to the
23 wildlife management guidelines; is that correct?

24 MR. McNICOL: No, Mr. Chairman, I was
25 speaking about the application of the Moose Habitat

1 Management Guidelines and being cognizant of
2 merchantability and marketability as it is reflected in
3 the different types of cover type that will develop
4 after the cut, the categories of low, moderate and
5 heavy residual areas which are important for wildlife,
6 particularly the moderate and heavy residual
7 categories, those are important for wildlife.

8 As I indicated yesterday, the biologist
9 should be able to project those areas, knowing what
10 species the company is going to cut, and then looking
11 at the FRI and photographs to determine where those
12 unmerchantable species are.

13 MR. CASSIDY: Q. And just a final
14 question on this, or one or two more. Mr. McNicol, in
15 your view, does a biologist need to do a field
16 inspection of a proposed operating area in order to
17 properly set wildlife prescriptions?

18 MR. McNICOL: A. No, I would say that is
19 not necessary in all situations. I would suggest that
20 if there is some difference of opinion with regard to a
21 particular prescription in an area, perhaps the company
22 has got a problem with a particular prescription and
23 the company thinks that there is a better way that the
24 wildlife management objectives can be met while taking
25 into account their concerns with regard to, for

1 instance, operability of a site, then I would suggest a
2 site visit is necessary, but certainly not in all
3 cases.

4 Q. So if a member of my clients or a
5 member -- any member of the public had a concern about
6 how the guidelines were being applied in a particular
7 area or how private descriptions were to be set and he
8 communicated that, he or she communicated that to the
9 wildlife biologist, you would think it prudent in that
10 circumstance for the wildlife biologist to do a field
11 inspection to satisfy himself or herself as to the
12 nature of the concern?

13 A. If the member of the public or a
14 company comes forward with a situation that the
15 biologist was not aware of at the time the prescription
16 was set and it needs field clarification, then yes.

17 Q. All right. And that, of course,
18 should be done prior to the setting of the prescription
19 and not after that field inspection?

20 A. Assuming that the information that
21 comes forward comes forward during the planning
22 process, then yes, it would be prudent to go out and do
23 that field examination before the setting of a plan
24 prescription.

25 Q. And, Mr. McNicol finally on this.

1 Should a biologist, in your view, factor in the
2 residual timber that is left after harvesting and
3 subsequent treatments before he determines if
4 additional habitat areas are required?

5 A. Very much so.

6 Q. Now, I want to turn to you again, Mr.
7 Kennedy - I will try and keep it to an hour - and I
8 want to ask you. I take it that you have all these
9 maps here in front of us, and the record won't show, at
10 least the photographs, but we have got a lot of
11 various -- we have got nine separate sampled areas
12 here, as I understand it. And am I correct that all of
13 the areas depicted on these samples were harvested
14 using the clearcut silvicultural system.

15 That's correct, right?

16 MR. KENNEDY: A. Yes, that's correct.

17 Q. And is it fair to say that when you
18 study these maps there is a varying amount of standing
19 timber in these various areas?

20 A. That's correct.

21 Q. Therefore, is it fair to say that the
22 clearcut silvicultural system, Mr. Kennedy, will not
23 flatten the forest but will provide harvested areas
24 containing a diversity of components?

25 A. Yes, it would, and I am making the

1 assumption that diversity of components being the
2 degree of residuals that are left in an area, yes.

3 Q. And is it unfair then to judge the
4 merits of a silvicultural system by taking a snapshot
5 view of its results for a year or even 10 years?

6 A. Yes, I would say that is the case,
7 and that it would also be important to look at the
8 results over time of applying that system in terms of
9 the additional activities that occur in the forest,
10 particularly renewal and the tending aspects of
11 regenerating those areas.

12 THE CHAIRMAN: But, Mr. Kennedy, is it
13 also not fair to say that if you chose to you could
14 clearcut the whole area of the undertaking in a
15 particular year and if you looked at it immediately
16 after harvest, in that case, it may look rather
17 devastating?

18 I mean, there is another side to that as
19 well. Doesn't it also depend on how much and where?

20 MR. KENNEDY: Yes, Mr. Chairman, I would
21 have to agree with you, although I think it would be
22 inconceivable to suggest.

23 THE CHAIRMAN: I am not suggesting that
24 is what you would do, but if you are looking at a
25 snapshot in time, you can foresee any of the extremes

1 as well; I mean, there can be a whole range of how much
2 you clearcut, where you clearcut and what its
3 appearance at a point in time will look like?

4 MR. KENNEDY: Yes, there is a whole
5 range, just as we have tried to illustrate through the
6 photomosaic as well as the slides that we took and
7 included in the statement of evidence, to provide
8 further details on that.

9 We are only able to -- under the
10 guidelines set by the technical committee, we were only
11 able to look to areas up to 10 years of age. In fact,
12 the areas in Dog River/Matawin are less than that. So
13 our slides are showing areas that are above and beyond
14 my head in height, they regenerated successfully and
15 those areas are approximately five years of age, I
16 believe five.

17 There could have been areas that could
18 have been older than that, five years and older and
19 would be significantly larger. Those would be young --
20 at that point I would be tempted to call them young
21 stands. They have reached free to grow and have gone
22 beyond.

23 Now, that is to say that the clear cut
24 silvicultural system has been practised in Ontario in
25 places for much longer than 10 years and we do have

1 healthy regenerating stands.

2 And to be fair to follow Mr. Cassidy's
3 question, in that at the other extreme we have areas
4 that are regenerated and much greater in height and
5 greater stand structure than we have described here as
6 essential size.

7 MR. CASSIDY: Q. If I can turn to Mr.
8 Bisschop. Very briefly in respect of your evidence on
9 the planning process this morning, Mr. Bisschop.

10 And I take it you referred to -- I am
11 looking now at Exhibit 1028 and I am looking at the
12 first page of the supplementary instructions there
13 where you highlighted the last paragraph on that page
14 where it suggests that - and your evidence was - that a
15 group of a number of areas of concern could be the
16 subject of a common form with a common prescription.

17 I take it that your highlighting that is
18 a recognition that there could potentially be a lot of
19 paper generated in any planning process; is that
20 correct?

21 MR. BISSCHOP: A. Yes.

22 Q. And is it a legitimate concern of an
23 environmental planner such as yourself or anyone else
24 that the planning process not be burdened with an
25 amount of paper or records that obscure genuine

1 environmental concerns?

2 A. Exactly. I think I commented on that
3 in terms of the utility of this documentation; it's
4 more than just documentation for documentation sake.

5 Q. All right. So a process which seeks
6 to reflect and document in detail environmental
7 decision-making should also bear in mind that there is
8 a quantum of paper beyond which members of the public
9 or others might find it of less utility?

10 A. I would agree.

11 MR. CASSIDY: If I could just have a
12 minute, Mr. Chairman.

13 Those are my questions, Mr. Chairman.

14 THE CHAIRMAN: Very well, thank you.

15 Well, we are going to take a break at
16 this moment. It was our understanding that NAN was
17 going to cross-examine; is that not the case?

18 MR. FREIDIN: They have advised that they
19 are not going to. They advised me the day before
20 yesterday.

21 THE CHAIRMAN: So it's just the Ministry
22 of the Environment.

23 Okay. We will continue after the break.
24 How long do you think you will be?

25 MS. HARVIE: About two hours.

1 THE CHAIRMAN: About two hours. Very
2 well, thank you.

3 MR. CASSIDY: Mr. Chairman, just before
4 we break, I just wanted to advise something, since this
5 is probably the last day we will be together before
6 next week in Toronto.

7 I spoke to the colleagues of mine who are
8 in Toronto at the moment and they have advised me that
9 at present the OFIA/OLMA has served seven of its ten
10 panels, two of the three remaining panels are being
11 served either today or tomorrow, and the third
12 remaining panel, which is our last panel, the planning
13 panel, we intend to serve at the same time as the terms
14 and conditions are filed which is January 30th, the
15 main reason being that they are part and parcel of the
16 same thing.

17 And so I just wanted to keep the Board
18 advised of our intentions to have all of the evidence
19 out as soon as possible, and...

20 THE CHAIRMAN: Prior to the commencement
21 of your case?

22 MR. CASSIDY: Oh, yes. Well, as I say,
23 they should all be filed by the time the terms and
24 conditions, and given the vagaries in the completion of
25 the MNR's case, I wanted to simply advise the panel of

1 that. To be quite frank, I thought we would be going
2 until next week and I am delighted to see we are making
3 process, so that we will start on February 5th. So
4 that is the reason for the time.

5 THE CHAIRMAN: Okay. Could you advise us
6 or advise Ms. Devaul, and I guess advise other parties,
7 what exhibits you are going to require in Toronto.

8 MR. CASSIDY: With respect to the first
9 two panels, I will have to speak to Mr. Cosman about
10 that because he will be handling them.

11 I have already had a number of
12 conversations with him about that, and I have also had
13 a conversation with Ms. Devaul about that. I take it
14 you want that information sooner rather than later for
15 the purposes of getting it down to Toronto, so I will
16 follow up again today with Mr. Cosman.

17 THE CHAIRMAN: Thank you.

18 We will break for 20 minutes.

19 ---Recess taken at 10:25 a.m.

20 ---On resuming at 10:50 a.m.

21 THE CHAIRMAN: Thank you. Be seated,
22 please.

23 Ms. Harvie, are you ready to proceed?

24 MS. HARVIE: I am, yes.

25 Mr. Chairman, Members of the Panel, since

1 this is the first time I am appearing before you on
2 behalf of the Ministry of the Environment I should
3 introduce myself for the purposes of the record. My
4 name is Betsie Harvie.

5 My cross-examination of this panel will
6 be fairly short. I propose to deal with three or four
7 separate issues that were raised in yesterday's and
8 this morning's evidence.

9 First, everyone recognizes that MNR went
10 to a lot of trouble and cost to provide Forests for
11 Tomorrow with a response to its interrogatory. We do
12 not wish to take issue with the methodology that was
13 used, but the Ministry of the Environment would like to
14 clarify for the Board certain points raised with
15 respect to the limits to the methodology.

16 CROSS-EXAMINATION BY MS. HARVIE:

17 Q. Perhaps these questions should be
18 addressed to Mr. Kennedy.

19 Mr. Kennedy, would you please confirm
20 that the clearcut exercise only purported to identify
21 the largest clearcut based on certain criteria or
22 parameters?

23 MR. KENNEDY: A. Yes, that's correct,
24 that is the case, as well as particularly with the
25 sample area that was chosen.

1 Q. And so is it fair to say that there
2 may be larger single clearcut areas in any of the nine
3 management units examined yesterday?

4 A. It's possible that there could be
5 larger blocks of clearcut that have occurred in other
6 years.

7 Q. Right.

8 A. But I would suggest that not in the
9 87/88, unless as noted in the notes that we provided.

10 Q. Right, okay. And could there indeed
11 be larger contiguous clearcuts in any of these or any
12 other management unit?

13 A. Yes, there could be larger
14 contiguous. Again, during the course of our
15 presentation we have indicated that we, in the
16 committee, had to arrive at a way of starting the
17 exercise and from there mapping contiguous. So if a
18 person or group came up with a different mechanism of
19 starting a mapping exercise that, yes, you could end up
20 with a different contiguous area.

21 Q. Right.

22 THE CHAIRMAN: Mr. Kennedy, did any of
23 the participants to the exercise put forward any
24 alternative larger clearcuts that they wished MNR to
25 examine specifically because any member of the

1 committee happened to know about them, or was there
2 agreement on the ones chosen to be provided in the
3 examples?

4 MR. KENNEDY: I would say that there was
5 agreement, and I don't recall anyone suggesting that we
6 look at management units that are not represented here,
7 nor do I think there is a suggestion that we take a
8 radically different approach on determining where such
9 an area might exist.

10 MS. HARVIE: Mr. Sutterfield advises me
11 that it was led in evidence yesterday that the parties
12 on -- the representatives to the technical committee
13 did agree with the methodology. We only wanted to
14 establish that there were limits to it.

15 Q. Okay. So could it be said that in
16 response to the interrogatory posed by Forests for
17 Tomorrow, which was exactly what is the maximum size of
18 a clearcut, you didn't produce an answer that responded
19 exactly to that interrogatory, you produced a
20 representative sampling; isn't that so?

21 MR. KENNEDY: A. I would suggest that,
22 or in response to that I would say that the committee
23 that designed the exercise, which included
24 representatives from Forests for Tomorrow, felt that it
25 was an adequate approach to answering that question.

1 Q. Okay. Would you please take out
2 Exhibit 1013. Its the back cover of the December, '89
3 edition of Seasons Magazine.

4 A. Yes.

5 Q. Based on the methodology used, there
6 is no guarantee; is there, that even if this clearcut
7 was located on one of the nine management units that it
8 would have been picked up through your selection
9 process?

10 A. Could you repeat that, the first part
11 of your question. Did you say there is no guarantee
12 that---

13 Q. That's right.

14 A. --that it would have been picked up?

15 Q. Yes. If it had been outside -- if it
16 had been subject to a two-year contiguous clearcut or
17 hadn't occurred within that 87/88 year, it would not
18 have been picked up?

19 A. Yes, I think there may be other ways
20 that it may not have been picked up. If it had been
21 not an 87/88 cut, it would -- that would exclude it
22 first of all.

23 Secondly, if it didn't fall in proximity
24 to the 87/88 starting point, the largest block, and it
25 was within three years of harvest it would not have

1 been included. As well as, it could have been a block
2 that was separated by an area that was a break, that
3 would constitute a break in a contiguous pattern, it
4 may not have been included. So, yes, it is possible.

5 Q. Okay, thank you. This question
6 perhaps could be directed at Mr. McNicol.

7 Mr. McNicol, is it correct to say that
8 the moose guidelines have been in effect at least in
9 draft form since approximately 1980?

10 MR. McNICOL: A. Yes.

11 Q. All right. And I take it that your
12 mapping of the clearcuts represents the application of
13 the moose guidelines as of 1987/88?

14 A. Yes. That version of the guidelines
15 which is very similar to the current version, yes.

16 Q. All right. Could you please turn to
17 page 68 of your statement of evidence at Table 1 which
18 is entitled: Results of Site of Clearcut Exercise.

19 A. I have it.

20 Q. All right. Now, in general, is it
21 fair to say that a large percentage of these nine
22 management units contain uncut forest and moderate to
23 heavy residuals and, in particular, the Domtar
24 Armstrong unit?

25 A. In the example that you cite, the

1 Domtar Armstrong, yes.

2 Q. All right. Is it a fair statement
3 that if the moose guidelines had not been applied in
4 the Domtar Armstrong unit that there would have been
5 less uncut conifer or hardwood and less moderate to
6 heavy residuals?

7 A. I would turn to Mr. Kennedy for
8 clarification, but I would suggest that in the case of
9 the uncut dense conifer, if the guidelines had not been
10 applied that that would be correct, although with
11 respect to the percentage of the uncut dense conifer,
12 that would then come out; i.e., if the corridors were
13 not there. I can't speak to, I don't know the numbers.

14 With regard to moderate residuals, I
15 would suggest your statement is incorrect, that the
16 application of the guidelines would not affect the
17 amount of moderate residual area that is shown here.

18 Q. But they might well affect the uncut
19 and the heavy residuals; is that correct?

20 A. No, it would affect the uncut; it
21 would not affect the moderate, nor would it affect the
22 heavy.

23 Q. Why is that?

24 A. The guidelines, as they have been
25 applied here, affect the conifer component, the uncut

1 conifer component. As I indicated yesterday, the
2 corridors that you see on that map--

3 Q. Mm-hmm.

4 A. --are engineered by the biologist to
5 meet the cover concern in an area of open clearcut.
6 The biologist, given the unallocated block and the
7 surrounding uncut dense conifer, was not concerned
8 about the cover component proximate to those areas of
9 moderate or heavy residual but were a function of
10 merchantability. The company did not harvest those
11 areas.

12 Now, when the guidelines were applied the
13 biologist took into account the fact that there were
14 going to be areas of moderate residual and heavy
15 residual to the east of the unallocated block and,
16 thus, did not engineer anything that was necessary to
17 meet habitat requirements for moose in those areas.

18 Q. All right, thank you. Just a moment,
19 please. Would you refer please to Exhibit 1011. Page
20 5 of that exhibit is identified as management factors.
21 Okay, Mr. Greenwood?

22 MR. GREENWOOD: A. Correct.

23 Q. You talked yesterday about proposed
24 silvicultural prescriptions and within that discussion
25 you talked about reasons to justify permitting bigger

1 cuts such as the example you gave as damage caused by a
2 budworm infestation.

3 Are there any silvicultural prescriptions
4 that would reduce the size of a clearcut rather than
5 just increasing them?

6 A. Yes, in fact, I gave an example of
7 that yesterday on the Ignace or English River example,
8 or when I was describing that example, prescribed burn
9 which requires a reasonable boundary to control that
10 burn may either increase it by adding a stand to get to
11 a reasonable boundary or decrease the size to include a
12 reasonable boundary.

13 Q. Okay. What about natural
14 regeneration. An example I might give you is in a
15 silvicultural guide for the spruce working group, which
16 is identified as Exhibit 382, okay, and at page 47 in
17 that exhibit is a section entitled: Modified Clearcut
18 Systems.

19 A. Correct.

20 Q. If I might read this into the record,
21 it deals with strip cuts:

22 "The width of the cut strips has
23 typically varied between 40 and 80 metres
24 and is limited by reliable seeding
25 distance. Strips up to 80 metres wide

1 provide acceptable results although
2 narrower strips increase the probability
3 of successful regeneration."

4 MS. MURPHY: Could you remind me of the
5 page again, please?

6 MS. HARVIE: I am sorry, page 47.

7 MR. GREENWOOD: And where were you
8 reading, please?

9 MS. HARVIE: Q. It's the very bottom
10 paragraph, page 47.

11 MR. GREENWOOD: A. Yes, I have it.

12 Q. Would you agree with me that that is
13 an example where a clearcut should be limited by
14 reasons relating to the natural regeneration?

15 A. Yes. In fact, I had neglected to
16 mention that. One of the factors that I was going to
17 mention under silvicultural prescription was natural
18 regeneration in the form of strips or blocks.

19 Q. Strips or blocks. What about patch
20 cutting?

21 A. I would include that in blocks, yes.

22 Q. I see, okay. And what about open
23 clearcut, full-tree logging natural regeneration for
24 black spruce?

25 A. Open clearcut, full-tree logging for

1 black spruce?

2 Q. Yes. Is it too limited by a need for
3 reliable seeding distance?

4 A. Yes, it would be.

5 Q. All right, thank you. Can you think
6 of any other factors that might limit the size of a
7 clearcut?

8 A. I don't know about limiting the size
9 of the clearcut. I know there is an example behind me
10 where what was classified within the clearcut was
11 affected by a silvicultural prescription.

12 In this case it was an area on the White
13 River Forest which was regenerated by black spruce seed
14 groups and by leaving groups of trees throughout the
15 area it was classified as, I think, a moderate residual
16 category or one of the residual categories because of
17 the amount of black spruce that was still left within
18 the area.

19 Q. All right, thank you.

20 Dr. Abraham, there has been a number of
21 witnesses in a variety of panels that told the Board on
22 how beneficial residuals are to certain wildlife
23 species; is that correct?

24 DR. ABRAHAM: A. Yes, I believe that's
25 true.

1 Q. All right. If the residuals died as
2 a result of an aerial spray program, what would happen
3 to the wildlife species dependent upon the residuals
4 for food and for cover?

5 A. Well, that is a complex answer. It
6 again depends upon the area affected by the spray
7 program, the adjacent stands unaffected, the efficiency
8 of the spray program and so forth.

9 But taking it in the very narrow sense, a
10 portion of residuals for which a portion of additional
11 habitat, vegetation types removed by the spray program,
12 the responses to the individual species would depend on
13 the biology of the species and on the extent to which
14 they were limited or dependent upon that residual that
15 was removed.

16 Q. All right. Well, is it a fair
17 statement to say that to some extent the removal of
18 residuals would have a deleterious effect on the
19 wildlife habitat?

20 A. For some period of time that might
21 happen, yes.

22 Q. Thank you. In none of the pictures
23 or the maps that we looked at yesterday that showed
24 residuals was there any suggestion or was there any
25 discussion concerning the extent to which residuals may

1 be lost as a result of aerial spraying?

2 A. That's right. Is this directed
3 towards me?

4 Q. Yes, it is.

5 A. Could you repeat the very first part
6 of the question?

7 Q. Okay. In none of the pictures or
8 maps that we looked at yesterday that dealt with
9 residuals, there was no discussion and there was no
10 depiction of how an aerial spray program would affect
11 those residuals.

12 THE CHAIRMAN: What kind of an aerial
13 spray program, are you talking about a herbicide or a
14 pesticide? A pesticide isn't necessarily meant to --
15 or insecticides or BTs are not meant really to kill the
16 trees; are they, as opposed to salvaging the trees?

17 MS. MURPHY: The evidence in the panel
18 that actually dealt with the issues that my friend is
19 now revisiting talked about various information, about
20 the use of perhaps herbicides but also, as you point
21 out, the potential longer term effects of the use of
22 insecticides in keeping those trees alive.

23 So there was quite a lengthy and
24 complicated discussion about those various factors at
25 that time.

1 THE CHAIRMAN: I mean, the Board recalls
2 evidence about the use of herbicides to keep down
3 certain residuals in order that the species that you
4 want to grow will grow free of competition. But apart
5 from that, the Board doesn't recall evidence to show
6 wide-spread use of aerial spraying for the purpose of
7 removing residuals, unless that in fact was the case
8 and I have got it wrong. Perhaps one of the foresters
9 might address that.

10 MR. GREENWOOD: I am not aware of a
11 situation where aerial spraying would be aimed at the
12 residual canopy. It could possibly be part of a site
13 preparation program, but generally when you are going
14 into a site preparation program, it would be where the
15 degree of residuals was relatively low.

16 In the case of release, it may be that by
17 spraying an area to release or tend the desired species
18 from competing vegetation that the residuals in the
19 area would be affected as well and, in that sense, you
20 could be removing the residuals in a spray operation,
21 but it would very much depend on the rate at which you
22 were putting the chemical down. It is harder to kill a
23 residual mature tree than it is a younger regenerating
24 tree in many cases. So it would depend on the rates of
25 chemical you were putting down, the actual treatment

1 that was being applied.

2 But, in that sense, that may have been
3 what you were referring to, that in trying to release a
4 crop tree from the vegetation on the ground you would
5 also be spraying the residuals in the area and killing
6 them.

7 MS. HARVIE: Q. That's correct, that is
8 what I was referring to. Could I ask you one quick
9 question. Will glyphosate kill deciduous residuals?

10 MR. GREENWOOD: A. It depends on the
11 species. Glyphosate will definitely kill residual
12 poplar, poplar is particularly susceptible.

13 Q. All right. I have just a couple of
14 questions on the moose guidelines. I think we can deal
15 with them quite expeditiously.

16 This is a question that I would like to
17 direct to Mr. McNicol. Mr. McNicol, isn't it true that
18 the interim direction for the application of the moose
19 guidelines is that they need only be applied to 60 per
20 cent of the area harvested before it's considered a
21 deviation?

22 MR. McNICOL: A. Here we go again. The
23 simple answer to that question is no. The guidelines
24 need be applied to all areas.

25 The rigor or stringency with regard to

1 the application of the guidelines is going to be a
2 function of the capability of the site to produce
3 moose. If you have an area that has good capability,
4 then you are going to be wanting to keep the average
5 size of those cuts over most of the area proposed for
6 harvest down to 80 to 130 hectares; in areas of lower
7 capability, both cover-to-cover distance parameters and
8 the size of clearcut parameters can go beyond that.

9 Q. And that is considered a deviation?

10 A. No, it is not.

11 Q. All right. Well --

12 A. The deviation --

13 MS. MURPHY: I don't think he finished
14 his answer.

15 MR. McNICOL: The deviation you may be
16 speaking to is the reference to the 260-hectare rule.
17 The 260 hectares simply is the size at which there has
18 to be silvicultural and biological rationalization for
19 the size of that cut. So 260 hectares or more you are
20 going to have to rationalize why that cut is that
21 large.

22 Now, that only has significance -- the
23 extent of those areas only has significance with regard
24 to the review and approval mechanism within the
25 Ministry. If you have 20 per cent of the area that is

1 incorporated or composed of areas that are 260 hectares
2 or more in the open clearcut or low residual category,
3 then the review and approval process is normal; i.e.,
4 it gets district approval, it goes to the region for
5 final approval.

6 MS. HARVIE: Q. All right.

7 MR. McNICOL: A. If the total of those
8 areas gets to between 20 and 40 per cent, the review
9 and approval process can either be normal; i.e., goes
10 the way I just spoke, or at the regional director's
11 discretion he can bump that up for another review by
12 the ADM's office.

13 Q. Mr. McNicol, I don't mean to
14 interrupt you, but I think this has all been led before
15 in evidence, and it is gracious of you to provide such
16 a lengthy explanation to the question, but I don't know
17 that it's necessary.

18 In the interest of getting on, we can
19 move on to the next question, if that's all right with
20 you.

21 A. That's fine.

22 Q. All right, thank you. In making the
23 decision where the 60 per cent will be applied, does
24 the decision-maker not evaluate the existing moose
25 density and the potential for prime moose habitat?

1 A. Could you repeat the first part of
2 the question, please?

3 Q. All right. Just a moment please.

4 All right. In making the decision, does
5 the decision-maker not evaluate the existing moose
6 density and the potential for prime moose habitat?

7 THE CHAIRMAN: In making what decision?

8 MS. MURPHY: What decision?

9 THE CHAIRMAN: What decision are you
10 talking about?

11 MS. HARVIE: The decision with -- all
12 right, okay. The decision on how the moose guidelines
13 will be applied?

14 MR. McNICOL: Okay, continue please.

15 MS. HARVIE: Q. That was the question.
16 You look at moose density and you look at the
17 potential?

18 MR. McNICOL: A. You look at potential
19 first. You look at those parameters that are not going
20 to change markedly in time and those, in essence, are
21 related to production capability.

22 If you look at it very simplistically.
23 The richness of the site, its capability of producing a
24 diversity of different types of trees and age-classes
25 over time. Those rich sites are the ones that you want

1 to apply the guidelines rigorously in. There may or
2 may not be moose there at the time.

3 Moose populations, as with any wildlife
4 population, are subjected to a number of vagaries that
5 you cannot -- sorry, you look at production capability.
6 Rich sites, you apply the guideline to more rigor than
7 you do on low capability sites.

8 Q. Right, okay. Can you tell me whether
9 by the application of the moose guidelines an area with
10 low moose density or low potential can be changed to an
11 area with high or moderate moose density?

12 A. Best to deal with that with examples.
13 Jack pine sandflats would be an example of an area that
14 has low capability for sustaining high moose
15 populations. Purely drained spruce lowland areas on
16 the clay plains have low capability to produce high
17 numbers of moose.

18 Q. All right. Okay. Well, let's look
19 at it this way: If you have only got -- yesterday in
20 evidence you said there were three components that
21 moose like; they like water, cover and food, and
22 suppose you have a site that has only two of those
23 components, it's only got cover and food and -- I am
24 sorry, it's only got cover and water, and it's an
25 enclosed canopy; in this case could you improve the

1 moose density by making it small clearcuts?

2 A. What is the capability of the area to
3 produce moose; is it a rich site, or is it an area that
4 has got poor capability?

5 Q. Are you saying then that the ability
6 of a site to produce moose is almost exclusively
7 dependent upon whether or not it has a high capability
8 or a low capability?

9 THE CHAIRMAN: No. Aren't you saying
10 that whether or not the site itself has the capability
11 in terms of producing food - of regenerating into
12 varied species of mixed woods and that kind of thing -
13 and it either has that capability or it doesn't,
14 there's not much you can do about it if it doesn't have
15 that capability, so you can't improve it necessarily
16 with small clearcuts because what will come back will
17 be species which are unattractive in terms of high
18 capability of moose.

19 Is that not basically the answer?

20 MR. McNICOL: Yes. And what I did
21 relate, low capability areas to was their inability to
22 produce those habitat components, if we recall Dr.
23 Euler's evidence.

24 As a generalization, the limiting factor
25 on low capability areas is to produce that mixed wood

1 component over large enough areas that moose can
2 incorporate that into an average home range size.

3 So the limiting factor is the lower
4 capability, but that lower capability is evidenced in
5 producing a type of vegetation that is important for
6 sustaining moose populations.

7 MS. HARVIE: Q. Okay, thank you. Mr.
8 McNicol, as I understand it, the moose guidelines were
9 applied for the one-year cut on the Domtar Armstrong
10 unit; is that correct?

11 MR. McNICOL: A. I am sorry, could you
12 repeat that?

13 Q. The moose guidelines were applied on
14 the one-year cut for the Domtar Armstrong unit?

15 A. The biologist when he viewed that
16 plan, the 87/88 portion of that plan decided, yes, that
17 in that open clearcut area some cover should be
18 provided.

19 Q. All right, thank you. Could you go
20 please to Exhibit 1020C which is the map behind you of
21 the Domtar Armstrong unit and identify for me the lake
22 in the upper left-hand corner. I am looking actually
23 at Big Lake.

24 MS. MURPHY: Well, rather than having him
25 search for it, perhaps you could show him.

1 MS. HARVIE: He's found it. Thank you
2 very much.

3 Q. Could you refer now to Exhibit 412
4 which is an MOE interrogatory, Question 17, which was
5 asked in Panel 8.

6 MR. McNICOL: A. Are you going to want
7 me up here, Ms. Harvie, or can I go back?

8 Q. That's fine, you can go back to your
9 seat. Thank you.

10 THE CHAIRMAN: What question number was
11 that?

12 MS. HARVIE: It is Interrogatory Question
13 17, Exhibit 412.

14 Q. The question posed there -- do you
15 not have a copy?

16 MR. McNICOL: A. No, I don't.

17 MS. MURPHY: The exhibit that had the
18 interrogatories, we got one from upstairs. I think you
19 have got one there, I don't have one.

20 MR. KENNEDY: Which panel?

21 MR. McNICOL: I'm sorry?

22 MS. HARVIE: Q. Panel 8.

23 MR. McNICOL: A. Panel 8, okay.

24 Q. Okay?

25 A. I am with you so far. Now, what's

1 your question?

2 Q. Question 17.

3 A. Okay, I have it.

4 Q. All right. And the question posed
5 there was: What new primary and secondary roads have
6 been gated in the Domtar/Armstrong unit? It is a
7 paraphrase of the question, but I think that was the
8 gist of it; is that correct?

9 A. Yes.

10 Q. Would you agree with me? Yes?

11 A. Yes.

12 Q. All right. Now, the response
13 provided in B(2) was that Big Road and Block 932 road
14 had been gated; is that correct?

15 A. Yes.

16 Q. All right. To the best of your
17 knowledge, is Big Road the only road leading into Big
18 Lake?

19 A. I'm sorry, I don't have that
20 information.

21 Q. All right. Well, subject to
22 verification?

23 MS. MURPHY: Well, I would like to point
24 out there are nine large areas here that this panel has
25 got some information about and prepared to answer

1 questions with respect to it. My friend didn't advise
2 us earlier that they wanted anything in more detail and
3 I think it is particularly difficult for the witness
4 to --

5 THE CHAIRMAN: Well, he has just
6 responded, Ms. Murphy--

7 MS. MURPHY: That he doesn't know.

8 THE CHAIRMAN: --that he doesn't know.

9 MS. HARVIE: It is not critical to the
10 question. I can move on without a definitive response
11 one way or the other.

12 THE CHAIRMAN: Very well.

13 MS. HARVIE: Q. Mr. McNicol, isn't one
14 of the main reasons for the guidelines to increase
15 hunting and viewing opportunities?

16 MR. McNICOL: A. I'm sorry, application
17 of the moose guidelines?

18 Q. Yes.

19 A. Insofar as it creates or maintains
20 good moose habitat and that results in more moose which
21 then offers more hunting and viewing opportunities,
22 yes.

23 Q. Exactly. Don't you think it's
24 reasonable for hunters to wish to have access or
25 viewers to wish to have access to areas where the moose

1 guidelines are applied based on the objective?

2 A. Do I think it's reasonable for them
3 to want that?

4 Q. Yes.

5 A. I have no problem answering that with
6 a yes. It's reasonable that they would want that, yes.

7 Q. Does it make more sense, Mr. McNicol,
8 to apply the moose guidelines in such a way and in
9 places so as to provide a greater socio-economic
10 benefit, even though in doing so there may be a
11 somewhat diminished opportunity to increase the total
12 moose population?

13 A. I'm sorry, I'm going to have to
14 digest that question a little bit better. Could you
15 repeat it, please?

16 Q. Certainly. Don't you think it makes
17 more sense to apply the moose guidelines in such a way
18 and in places so as to provide a greater socio-economic
19 benefit; that is, opportunities for hunters or viewers,
20 even though in doing so there may be a somewhat
21 diminished opportunity to increase the total moose
22 population?

23 THE CHAIRMAN: Ms. Harvie, if you are
24 asking that as just a general proposition, that's one
25 thing. In the context of this Big Road closing, I

1 would suggest that the witness might have to know why
2 or the reasons behind the closing of that road. It may
3 be entirely unrelated to protecting moose. There may
4 have been another reason such as a tourist operator in
5 the area or a fisheries concern, for example, that
6 required the gating of that road.

7 MS. HARVIE: Yes.

8 THE CHAIRMAN: So I think you can put it
9 to him as a general proposition, but not in the context
10 of that example if he does not know about the facts
11 surrounding that particular example.

12 MS. HARVIE: Yes, Mr. Chairman, I think
13 that's correct. It is intended to be stated as a
14 general proposition given that he wasn't familiar with
15 the Big Road -- Big Lake Road.

16 MR. FREIDIN: Mr. Chairman, I would just
17 rise and ask what the relevance of this whole line of
18 questioning is to this exercise?

19 THE CHAIRMAN: Well, the relevance is the
20 application of the moose guidelines in the context of,
21 presumably related to the clearcut exercise in some
22 peripheral way, but since we are on the moose
23 guidelines, and since Ms. Harvie wants to explore this
24 general proposition, the Board doesn't see the harm in
25 letting the witness reply, if he can.

1 MS. HARVIE: I've only got a couple more
2 questions, so if you will bear with me, it won't be
3 very long. Thank you, Mr. Chairman.

4 MR. McNICOL: I haven't avoided the
5 question yet? We are back to it; are we?

6 MS. HARVIE: Q. We are.

7 MR. McNICOL: A. If you are asking me,
8 if it is desirable to have the benefits of the
9 application of the Moose Habitat Management Guidelines;
10 i.e., more moose available to the general public, I
11 would suggest, yes, that is desirable.

12 We have to be cognizant of the fact that
13 there are other values out there and those other values
14 may impinge upon the accessibility of higher moose
15 numbers to have accrued through application of the
16 guidelines in a particular area.

17 As I hopefully indicated in my direct
18 evidence, these areas continue to be moose habitat for
19 a significant period of time. In my experience, the
20 gating of roads is an ephemeral thing, that once these
21 areas grow or vegetate to a point or the road
22 deteriorates to a point where it is not passable any
23 longer, that these gates are removed, and these areas
24 then become available for viewing or hunting
25 opportunities.

1 Q. Okay. Mr. McNicol, is there any MNR
2 policy requiring the implementation of the moose
3 guidelines for areas frequented by native subsistence
4 hunters?

5 A. The areas that are proposed for
6 harvest are treated the same with regard to guideline
7 application irrespective of who the end user of the
8 moose, or whatever wildlife species you are trying to
9 perpetuate on the site or enhance, irrespective of who
10 that end user may be.

11 Q. So your answer is no; is that
12 correct?

13 A. Correct.

14 Q. All right, thank you. Okay. Going
15 back to Exhibit 1012, which is again the picture
16 appearing in Seasons Magazine. Mr. McNicol, maybe you
17 can see it from here. Could you please confirm for us
18 that the clearcut shown here is an area of normal
19 operations?

20 If you are unable to answer that, perhaps
21 there is another panel member who can.

22 MR. KENNEDY: A. Mr. Chairman, to answer
23 such a question would only be pure speculation I think
24 on any of the witnesses' behalf, and if you are willing
25 to put up with that, I would suggest that, no, what I

1 see on that slide shown on Exhibit 1013 is not totally
2 an area of normal operations.

3 THE CHAIRMAN: Wouldn't the fact that it
4 has got lakes in there right off the bat indicate that
5 they would probably be treated as areas of concern?

6 MR. KENNEDY: I think that there would be
7 depending on the values that are present there. Of
8 course, there would be consideration of those as values
9 and follow through the area of concern planning
10 process.

11 Just as this river system that starts in
12 the simple foreground of the photo and winds its way
13 over to the northwest corner, I believe there's -- it
14 would appear to me to be a reserve on that particular
15 river system, although I'm not familiar with the
16 details.

17 MS. HARVIE: Q. All right. Then may I
18 ask if the areas harvested were harvested in accordance
19 with normal operations set out in Table 4.11?

20 MR. KENNEDY: A. Again, I'm afraid we
21 would have to have more detailed information about this
22 particular area in order to answer such a question.

23 MS. HARVIE: All right. I would like to
24 move on now to the area of concern matters that were
25 discussed this morning in evidence.

1 With respect to the area of concern
2 documentation, you will recall, Mr. Chairman, that
3 during Mr. Campbell's cross-examination we proposed
4 that there be standard documentation requirements and
5 we support MNR's effort in this regard.

6 MR. CASSIDY: Is this Panel 15
7 cross-examination by Mr. Campbell that you are
8 referring to??

9 MS. HARVIE: Yes, that's right, Panel 15.

10 MR. CASSIDY: Thank you.

11 MS. HARVIE: In terms of the details of
12 the tables for the area of concern supplementary
13 documentation, we intend to discuss these with MNR
14 during the negotiations in February.

15 However, I have just a few questions of
16 clarification I would like to ask of Mr. Bisschop.

17 THE CHAIRMAN: Very well.

18 MS. HARVIE: Thank you.

19 Q. All right. Mr. Bisschop, do you
20 think that there are advantages in road planning to
21 listing all water crossings and areas of concern
22 traversed for each alternative road to simplify the
23 environmental analysis?

24 MR. BISSCHOP: A. I think that's a
25 complex question. I think, for example, in the

1 decision-making on secondary roads where you are
2 comparing one alternative to another, yes, there is
3 advantage and I would suggest it is required to
4 identify each and every area of concern crossing for
5 each alternative when you are making the comparison of
6 the final decision.

7 For primary roads, where the planning is
8 somewhat different in terms of the corridor stage
9 planning at the 20-year level and the details of
10 crossings being planned at the five-year level, I'm not
11 sure it's essential to identify each of the areas of
12 concern that are crossed, but it's possible.

13 Q. All right, thank you. I think this
14 is something that the Ministry of the Environment will
15 be pursuing in our negotiations.

16 Could you turn, please, to Exhibit 1029,
17 this is supplementary documentation, primary/secondary
18 road corridors. Now, under the environmental analysis,
19 under the alternative road corridors, does MNR look at
20 a use management strategy?

21 A. Yes, that's correct. For any
22 alternative that is subject to use management is
23 examined.

24 Q. Okay. At page 4 of the instructions,
25 you elaborate on what a use management strategy is,

1 page 4, Item 4?

2 A. That's correct.

3 Q. I take it then when you talk about a
4 use management strategy for abandonment, one of the
5 considerations will be the mitigation of potential
6 environmental effects; is that correct?

7 A. Yes. If a decision would be made
8 about abandonment, the subject of what's involved in
9 that abandonment and what post-abandonment actions
10 might be necessary would be addressed, yes.

11 Q. All right, thank you. Okay. And how
12 water crossings will be treated will be part of the use
13 management strategy?

14 THE CHAIRMAN: Sorry, what was that last
15 question.

16 MS. HARVIE: Q. How water crossings will
17 be treated is part of the use management strategy?

18 MR. BISSCHOP: A. Is this a continuation
19 on the abandonment question?

20 Q. It is, yes.

21 A. Yes. For example, the abandonment
22 strategy would speak to the question of whether or not
23 water crossing structures would have to be removed, and
24 assuming that some would not be removed, what
25 post-abandonment checks would be taken to ensure that

1 environmental concerns didn't develop.

2 Q. Okay. Could you turn please to
3 Exhibit 1028 which is the supplementary documentation,
4 operations in areas of concern. Part II of that, which
5 is on the second page, the first number:

6 "Normal operations can occur within all
7 or part of the area of concern without
8 adversely affecting identified values."

9 And there is two criteria listed there.

10 You are with me?

11 A. Yes, I am.

12 Q. All right. If you prescribe normal
13 operations, does the area remain an area of concern for
14 monitoring purposes under part 4 of this table?

15 A. Well, I guess I would answer to that
16 question, first of all, by saying area of concern is a
17 planning tool, it's not something sort of fixed, in the
18 sense that the ultimate decision that's made is a
19 prescription, there is no longer an area of concern.

20 Whatever monitoring provisions apply to
21 prescriptions, whether they are monitoring provisions
22 for modified prescriptions or the regular area
23 inspection activities that occur for any operation
24 including normal operations, there are -- the regular
25 area inspection procedure is applied.

1 THE CHAIRMAN: So you are saying that
2 basically monitoring will address the concerns
3 resulting from the prescription, as opposed to what
4 category of planning process was employed in arriving
5 at that prescription. Is that what you are saying?

6 MR. BISSCHOP: I think that's a way of
7 summing it up, yes, Mr. Chairman.

8 MS. HARVIE: Thanks.

9 Q. Mr. Bisschop, could you turn now
10 please to page 109 of the Timber Management Planning
11 Manual what is identified as Exhibit 7. It deals with
12 appendices and supplementary documentation.

13 MR. BISSCHOP: A. I have it.

14 Q. Thank you. Now, you make a
15 distinction in the Timber Management Planning Manual
16 between appendices and supplementary documentation;
17 isn't that correct?

18 A. That's correct.

19 Q. Okay. And the supplementary
20 documentation, according to the Timber Management
21 Planning Manual, does not accompany every plan; is that
22 correct?

23 A. Excuse me, could you ask that again?

24 Q. Supplementary documentation,
25 according to the Timber Management Planning Manual,

1 does not necessarily accompany every plan?

2 A. No, I believe that's incorrect.

3 Q. All right. Let me read to you from
4 the first line:

5 "The following two sections outline the
6 required appendices and supplementary
7 documentation for a timber management
8 plan. The appendices form part of the
9 plan and, as such, must remain with it at
10 all times. However, the supplementary
11 documentation must accompany the plan
12 through the review process but does not
13 form part of the plan and, therefore,
14 will not be available with every copy."

15 Now, Exhibits 1028 and 1029 are called
16 supplementary documentation; is that correct?

17 A. That's correct.

18 Q. All right. Am I correct that in
19 response to the Chairman's question this morning you
20 said that supplementary documentation should accompany
21 every plan; that is --

22 THE CHAIRMAN: No, but, Ms. Harvie,
23 doesn't the reading of that sentence just mean that
24 there may be more than one copy of the plan, there
25 probably is; one at the district level, maybe a copy

1 with the Environmental Assessment Branch, there may be
2 a copy at the regional level, but the supplementary
3 documentation isn't necessarily going to accompany
4 every copy, as opposed to the question that there will
5 be supplementary documentation with respect to each
6 original copy of the plan.

7 Is that not what that means?

8 MR. BISSCHOP: Yes, Mr. Chairman. If I
9 could, the point I was trying to make this morning is
10 that - if we're still considering it - but I think we
11 are leaning in the direction that, in terms of the way
12 we are approaching, for example, supplementary
13 documentation in areas of concern, that we really ought
14 not treat the plan and supplementary documentation as
15 two separate documents.

16 I think increasingly we are looking at
17 basically saying: There is no such thing as
18 supplementary documentation, it is all part of the
19 plan.

20 THE CHAIRMAN: I know, but are you going
21 to reproduce in multiple copies all of the
22 supplementary documentation, or are you going to have
23 the supplementary documentation available for
24 inspection with the original of the plan, and then
25 copies of just the plan available elsewhere?

1 That's the way I interpreted that
2 statement at the top of 109.

3 MR. BISSCHOP: I understand. I don't
4 think right now I have an answer that says we would
5 reproduce all of it. I think the position would be
6 that not necessarily would we reproduce all of the
7 accompanying supplementary documentation as the
8 official version of the plan.

9 MS. HARVIE: Those are all my questions.
10 Thank you.

11 THE CHAIRMAN: You might address that,
12 Mr. Bisschop, in the negotiations. That might be an
13 area that you could talk over with the other parties.

14 MR. BISSCHOP: Yes, Mr. Chairman.

15 THE CHAIRMAN: Mr. Freidin, are you going
16 to require the lunch break before re-examination?

17 MR. FREIDIN: I think we would appreciate
18 having one hour. We can advise that re-examination
19 will probably be extremely short, but we would like the
20 hour to consider how we can make it as short as
21 possible.

22 THE CHAIRMAN: Okay. I think we will
23 adjourn until 1:00 p.m.

24 ---Luncheon recess taken at 11:45 a.m.

25 ---On resuming at 1:05 a.m.

1 THE CHAIRMAN: Thank you. Be seated,
2 please.

3 Ms. Murphy?

4 RE-DIRECT EXAMINATION BY MR. MURPHY:

5 Q. Mr. Kenndy, during the
6 cross-examination on behalf of OFIA you were looking at
7 a photograph of one of the stands in the contiguous
8 harvest area and Mr. Martel asked you a question, and I
9 have it basically as follows: Why would you call
10 standing timber like this clearcut?

11 And, as I understand it, you explained to
12 him they were basically three reasons: One, you want a
13 record of the entire landbase; two, you need to
14 maintain the integrity of the inventory for the
15 purposes of calculation of maximum allowable depletion;
16 and, third, you described some practical mapping
17 problems.

18 Would you please explain what you meant
19 by that second item that you mentioned, the need to
20 maintain the integrity of the inventory for the
21 purposes of calculating the maximum allowable
22 depletion?

23 MR. KENNEDY: A. By that I was referring
24 to the fact that there are specific areas which are
25 included in the calculation. We refer to that as the

1 free to grow landbase and has been described in earlier
2 evidence, and there is a need to include in the
3 calculation just those areas that have reached the free
4 to grow condition; that is, those that are contributing
5 to the commercial forest base. When we were looking at
6 an area that has been cut-over, it is important to
7 categorize those areas into new stand types or what
8 will eventually become new stand types.

9 Now, if we were to take perhaps a time
10 sequence, might be the best way of describing this.
11 Immediately after the area is harvested we essentially
12 erase the stand boundaries that were there prior to
13 harvesting and we call the area cut-over and we then
14 carry out the regeneration treatments. And if we jump
15 ahead to the time that the areas start to reach free to
16 grow, we conduct regeneration surveys or free to grow
17 surveys in those areas and determine what the new stand
18 compositions are and draw new stand boundaries and
19 re-enter them into the inventory. In the case of an
20 area that is free to grow, we re-enter it into the
21 inventory in the portion that is used in the MAD
22 calculation.

23 Now, going back to time zero then, right
24 after harvest, there may be areas that do not
25 regenerate at the same rate and may take longer, so we

1 could have some areas entering back into the inventory
2 at, say, five years of age, others might be seven or
3 ten years of age before they reach that free to grow
4 stage.

5 Additionally, there may be areas that
6 were not harvested at time zero or may be partially
7 harvested, and we track those by looking at the stand
8 that is left after harvest. There may be
9 unmerchantable timber. If an area is large enough,
10 what we do is we -- large enough, being greater than
11 eight hectares, we retype it and give it a new stand
12 number and a new stand composition and it would
13 automatically go back in the inventory. We do not
14 necessarily update each entire inventory base each
15 month, we would keep track of those areas and update at
16 the time prior to the recalculation.

17 Other areas that you might encounter
18 would be those that have had a partial harvest. If you
19 could picture a two-storied stand where perhaps there
20 is jack pine on a stand and on some areas young spruce
21 regeneration underneath it, if the jack pine was
22 harvested, we would call the area as part of the
23 clearcut, part of the harvested area. However, if the
24 spruce underneath was a sufficient size, greater than a
25 metre, and there was a sufficient number of them, the

1 area might automatically be able to be considered as a
2 free to grow area. And during the retyping you could
3 call that area now into the spruce working group and
4 automatically enter it back in the inventory.

5 So the theme that I'm speaking of is
6 ensuring that you record areas as harvest or as the
7 correct depletion, harvest or natural, and that you
8 look at those relative to the areas that were planned
9 for harvest and you enter them back into the inventory
10 only when they've reached the free to grow state.

11 Q. And am I right that the failure to
12 properly record those areas may tend over the long term
13 to give you an overestimation of the amount of timber
14 that might be available for harvest?

15 A. Yes, you are correct in that, and it
16 could also go the other way; if you fail to update your
17 inventory to record those areas that are being
18 regenerated either naturally or artificially, if you
19 fail to record those into the MAD landbase at the time
20 of recalculation, you would be doing a disservice and
21 you would be underestimating the capability or ability
22 of that landbase to provide timber.

23 In a similar fashion, if you were to
24 record areas as free to grow prematurely and include
25 them in the landbase, you would be affecting the

ability to produce that area; in effect, you will be overharvesting or at least the prediction would encourage you to overharvest.

4 So it's important that we track every
5 hectare essentially of the landbase through time to
6 determine the fate of it and pay particular attention
7 in the actual recordkeeping as it comes to the
8 inventory which is updated prior to the MAD
9 calculation.

10 Q. Thank you. And one final question
11 for you, Mr. Kennedy. Ms. Harvie asked you a series of
12 questions suggesting certain limits on the results of
13 this clearcut exercise.

21 A. Yes. As far as qualifications go, I
22 would say of relevance to this exercise I would make
23 mention of the fact that there were three professional
24 foresters involved in the exercise, those being Mr.
25 Bill Roll, Mr. Crandall Benson and myself and Mr.

1 Sutterfield, although is not a professional forester, I
2 understand is regarded as having a fair amount of
3 knowledge and perhaps expertise in the area of being
4 involved in timber management planning and, as such,
5 looking at mapped information and providing
6 interpretations of that information.

7 Q. And in particular, Crandall Benson,
8 as I understand it, was the person representing Forests
9 for Tomorrow; is that right?

10 A. That's correct.

11 Q. And do you know where Dr. Benson
12 practises forestry?

13 A. Yes. Mr. Benson is employed, as I
14 understand it, in his known capacity as a Professor at
15 Lakehead University.

16 Q. Thank you.

17 MS. MURPHY: And those are my questions.

18 THE CHAIRMAN: Thank you.

19 MR. FREIDIN: Mr. Chairman, I have a
20 series of questions for Mr. Bisschop. I want to just
21 make sure that he has some documents before him. I
22 don't think it's necessary for you to record these
23 documents, unless he does refer to them.

24 RE-DIRECT EXAMINATION BY MR. FREIDIN:

25 Q. But, Mr. Bisschop, do you have in

1 front of you documents Panel 15, Panel 1, the exhibit
2 book for Panels 12 and 13, and the Environmental
3 Assessment Document?

4 MR. BISSCHOP: A. Yes, I have them all.

5 Q. Okay. Now, Mr. Bisschop, I
6 understand that in terms of the preparation of this
7 environmental assessment, right from the day it began,
8 that in terms of continuous involvement by Ministry
9 staff you in fact have been involved in that basis, in
10 a continuous basis, longer than anyone else in the
11 Ministry. Is that a fair statement?

12 A. I believe that's fair.

13 THE CHAIRMAN: I'm not sure that's such a
14 covetous type of--

15 MR. BISSCHOP: I'm not sure I'm honoured.

16 THE CHAIRMAN: --distinction. Right.

17 MR. FREIDIN: Q. And, Mr. Bisschop,
18 would it be fair for me to assume that it is with some
19 glee that we have arrived at this particular stage of
20 the case?

21 A. It is with some glee that I will be
22 happy that the next 10 minutes will be over.

23 Q. Now, Mr. Bisschop, I understand - and
24 perhaps some people have noted in the past, and this is
25 noted even during direct examination - that from time

1 to time there seems to be a contest between you and me
2 as to who is going to get in the last word.

3 Is that a fair characterization of what
4 has happened in the past?

5 A. That's a fact.

6 THE CHAIRMAN: We could ruin that for
7 both of you, Mr. Freidin.

8 MR. FREIDIN: Q. And, Mr. Bisschop, I
9 also understand - and I don't think I would be
10 devulgling any confidence of a solicitor/client nature -
11 if I indicated that you have advised me on many
12 occasions that you are the client, that I am the lawyer
13 and, as a result, you are free to ignore, and you have
14 in fact on many occasions ignored my legal advice.

15 Is that true?

16 MR. BISSCHOP: A. It appears to be a
17 fact.

18 Q. Now, Mr. Bisschop, in recognition of
19 your long involvement in this case and your many, many
20 hours, months and years of anxiety about it, I thought
21 that at least at this particular stage of the case that
22 it would be appropriate that you do have the last word,
23 and perhaps you could start on a new practice of
24 perhaps following my advice more frequently.

25 So I would ask you, on this particular

1 occasion, to follow my bidding exactly and I would like
2 you to have the last word; and, therefore, could you
3 please advise the Board that there are no further
4 questions and that, in fact, this is the end of the
5 proponent's case in-chief?

6 A. I would be pleased to advise the
7 Board of that.

8 MR. FREIDIN: That is. Thank you, Mr.
9 Bisschop.

10 ---(Panel withdraws)

11 THE CHAIRMAN: Thank you, Mr. Freidin.

12 Mr. Bisschop, I guess this is directed
13 primarily to counsel for the Ministry. You have
14 managed, according to the Board's records, to put in
15 the proponent's case in approximately 174 days. Well
16 done.

17 When we started this we had no idea how
18 long this phase of the case would last, but there has
19 been a lot of evidence and a lot of water under the
20 bridge.

21 We are about to start the next phase of
22 the case and hopefully it is the Board's fervent hope
23 that the rest of it goes a little quicker than the
24 proponent's side went.

25 We are hoping that there will be positive

1 results from the negotiating session that we have
2 mandated and we are going to step up our efforts on
3 scoping procedures for the remainder of the case as
4 well.

5 We just don't want it to -- although Mr.
6 Bisschop has the record for the Ministry as being
7 involved the longest, the rest of us at the Board don't
8 want to hold the record for having been involved
9 necessarily in the longest environmental case in this
10 country.

11 I don't think we have anything further to
12 say, other than we will adjourn the proceedings until
13 next Wednesday. We are purporting to start at 10:00
14 a.m., if we could, next Wednesday, so that Mr. Martel
15 can come in that morning instead of the night before.

16 ---(Ms. Blastorah enters)

17 THE CHAIRMAN: My Goodness!

18 This, I might add, is probably a first in
19 the history of the Board. With the looks of what you
20 are about to present, perhaps it won't be the last. We
21 may make this part of our Board's Rules of Procedure.

22 MR. FREIDIN: We have no further
23 submissions, and I think if you want to adjourn, Mr.
24 Chairman, we could move on to other important matters.

25 THE CHAIRMAN: All right. Thank you.

1 ---Whereupon the hearing adjourned at 1:20 p.m., to be
2 reconvened on Wednesday, January 31st, 1989, at the
3 Environmental Assessment Board Offices, 2300 Yonge
 Street, 12th Floor, Toronto, Ontario, commencing at
 10:00 a.m.

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